HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 10961 of 1998

DATED: 06-06-2007

Between:-

K. Raghunadha Reddy s/o K. Siva Rama Reddy, aged about 40 years, working as Lecturer in Sanskrit and others.

…PETITIONERS

And

The Government of A.P. represented by its Principal Secretary, Education Department, Secretariat Buildings, Hyderabad and two others.

…RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 10961 of 1998

O R D E R

The petitioners, six in number, are all Lecturers working in the 3rd respondent College. Their grievance in this writ petition is that, while the A.P. College Service Commission had conducted a teaching test on 23.08.1991 under intimation to the 2nd respondent and after selection had forwarded a list of selected candidates for issue of appointment orders to the 2nd respondent, respondents 1 and 2 had slept over the matter and it was only three years thereafter, vide proceedings dated 03.02.1996, that they had instructed the 3rd respondent to issue appointment orders to the petitioners herein. Petitioners would contend that they have been illegally deprived of their right to be appointed as Lecturers from 23.09.1993, the date on which the teaching test was conducted by the A.P. College Service Commission and that the inordinate delay on the part of respondents 1 and 2 should not be permitted to result in their being deprived of the benefit of service of nearly three years which would, in turn, affect their annual increments and other terminal benefits.

In the counter-affidavit, filed on behalf of respondents 1 and 2, it is stated that while the A.P. College Service Commissioner had conducted a teaching test to the petitioners on 23.09.1993 under intimation to the 2nd respondent and after selection had forwarded a list of selected candidates for issue of appointment orders to the 2nd respondent, the 2nd respondent had requested the 1st respondent, vide letter dated 26.10.1993, to clarify (i) whether the candidates selected by the Commission, and could not be fitted into the roster point maintained by the College, could be issued orders subject to the condition that the reserved point be filled in the next recruitment and (ii) whether the candidate selected by the Commission as a Lecturer could be appointed based on the workload of intermediate sections also keeping in view the bifurcation of Intermediate sections from composite colleges. According to the respondents, the Government had clarified, in their Memo dated 23.11.1994, that if the selected candidates belong to different roster points, they should be absorbed against reserved posts in terms of the orders issued in G.O.Ms.No. 362, Education dated 07-10-1994 and G.O.Ms. No. 166, Education dated 08-06-1994 in which it was stipulated that the rule of reservation, whenever applicable, would be followed and the backlog would be set off against further vacancies. It is further stated that, at the time when the Government had issued a clarification, there were about 200 surplus posts in various private aided degree colleges due to un-

economic students strength and insufficient workload and that the 2nd respondent proposed to keep appointments of the candidates, selected as per G.O.Ms.No. 302, Education, dated 23.08.1991, by the A.P. College Service Commission, pending till the surplus Lecturers were adjusted and that the same was also informed to the Government vide letter dated 06-02-1995 and only after all the surplus Lecturers were adjusted were instructions issued to the 3rd respondent on 03-02-1996 to issue appointment orders to the petitioners herein. Respondents would contend that the petitioners have a right on the post only from the date of issue of regular appointment letters and that they are not entitled to claim appointment from the date on which the teaching test was conducted by the A.P. College Service Commission.

Sri P.V.S.S.S. Rama Rao, learned counsel for the petitioners, would contend that there is an inordinate and unexplained delay on the part of the respondents in keeping the matter pending for nearly three years and that, for no fault of theirs, the petitioners had been illegally deprived of their right to be regularly appointed as Lecturers with effect from 23.09.1993. Learned counsel would submit that the explanation given by the respondents, in their counter affidavit, is only an eyewash and would not stand legal scrutiny. Learned counsel would place reliance on the judgment of the Supreme Court in **STATE OF MAHARASHTRA V. JAGANNATH ACHUT KARANDIKAR**[1]

and **PRADIP GOGOI AND OTHERS V. STATE OF ASSAM AND OTHERS**[2].

Learned Government Pleader for Higher Education, on the other hand, would submit that the 3rd respondent is the petitioner's employer and that the order of the competent authority, directing the 3rd respondent to issue appointment orders, is only for the purpose of extending financial assistance. Learned Government Pleader would submit that it is only from the date on which regular appointment orders are issued by the 3rd respondent, pursuant to the directions of the competent authority, would the employee concerned be entitled to the benefits of Grant-in-aid and not prior thereto. Learned Government Pleader would submit that any grievance, which the petitioners may have for reckoning their earlier service for the purpose of extension of financial assistance in the form of Grant-in-aid, cannot be redressed in view of the specific bar under Act No. 26 of 2006.

It is necessary to note that except for the oral submissions made across the bar, no affidavit has been filed by the petitioner in reply to the counter-affidavit filed on behalf of the respondents. As such, I am not inclined to accept the submissions, made across the bar on behalf of the petitioners, that the explanation given for the delay in directing the 3rd respondent to issue appointment orders is an eyewash and has been made only to deny the petitioners their right to be given orders of

regular appointment.

From the averments referred to above, it is clear that the delay was initially on account of the clarification being sought as to the manner in which the petitioners and similarly placed employees were to be placed in their respective roster points and later with a view to fill up the surplus posts of Lecturers in other colleges. It is necessary to note that these surplus Lecturers, who were sought to be adjusted in other colleges, were those who were being given the benefit of Grant-in-aid and as such respondents 1 and 2 were justified in placing these surplus staff, in colleges where there was inadequate workload, before filling up the remaining posts with the candidates selected by the A.P. College Service Commission.

Even otherwise, Section 4(2) of Act No. 26 of 2006 prohibits any proceedings being maintained against the Government, by any employee of a Private Aided College, claiming for release of Grant-in-aid taking into account the increments earned in the post prior to the date of admission of Grant-in-aid. Under Section 4 (3), no Court shall enforce any decree or order directing release of Grant-in-aid taking into account the increments earned in the post prior to the date of admission of grant-in-aid in favour of any employee of Private Aided Colleges.

Now the judgment relied upon on behalf of the petitioners. In ***Jagannath Achut Karandikar***[1], Rule 5 of the prescribed rules

required the government to hold an examination each year and, under Rule-2, a candidate who did not pass the examination at the end of nine years' service would loose his seniority. The Supreme Court held that, if an examination is not held in any year, Rule 2 could not operate to the prejudice of a person who had not exhausted all his chances and that a person, who did not exhaust the available chances to appear in the examination, could not be denied his seniority and that it would be unjust, unreasonable and arbitrary to penalize a person for the default of the government to hold the examination every year. The said judgment has no application to the facts of the present case. No rule, which entitles the petitioners herein to claim appointment from the date on which the written test was held by the A.P. College Service Commission, has been brought to the notice of this Court. Even otherwise the details stated in the counter affidavit filed on behalf of respondents 1 and 2, as reasons for the delay in issuing directions to the 3rd respondent to issue appointment orders to the petitioners, cannot be held to be arbitrary or unreasonable necessitating interference by this Court under Article 226 of the Constitution of India.

In ***Pradip Gogoi***[2], the Supreme Court observed that an eligible candidate had a fundamental right to lay his claim for consideration in his own right for recruitment to an office or post under the State under Article 16(1) of the Constitution, that the process of selection not having taken place due to non notification by the appropriate authority,

was having a deleterious effect on the psyche of the people and that dereliction of duty was seriously eroding the constitutional rights under Article 16(1) and was a source to circumvent due process of selection.

As noted above, the reason for not issuing the appointment orders for a period of nearly three years from the date on which the written test was held by the A.P. College Service Commission has been explained in the counter affidavit. In the absence of any reply being filed thereto, and as this Court is satisfied that the explanation furnished in the counter-affidavit is reasonable, no interference is called for. The writ petition fails and is accordingly dismissed. No costs.

_____

RAMESH RANGANATHAN,J

Dated: 06-06-2007

vp

---

[1] 1989 Supp (1) supreme court cases 393

[2] (1998) 8 Supreme Court Cases 726